

FILED

September 17 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. PR 06-0120

CITY OF MILES CITY,

Plaintiff,

v.

ROBERT B. SHIPLEY,

Defendant.

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ORDER

FILED

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

On September 11, 2009, Robert B. Shipley filed a motion to disqualify the Honorable Gary Day from presiding in Cause No. DC 09-17 in the Sixteenth Judicial District Court, Custer County, pursuant to § 3-1-805, MCA. Shipley has submitted an affidavit in support of his motion to disqualify Judge Day in which he alleges Judge Day has allowed the prosecuting attorney to engage in lawless conduct in the case.

A request for disqualification for cause must be filed more than 30 days before the date set for hearing or trial. Section 3-1-805(1)(a), MCA. We are informed by the Custer County Clerk of Court that Cause No. DC 09-17 has been set for trial on Monday September 21, 2009.

IT IS THEREFORE ORDERED:

1. The request to disqualify District Judge Day in Custer County Cause No. DC 09-17 is DENIED.
2. The Clerk is directed to provide copies of this order to the Clerk of the District Court of Custer County for notification to counsel of record in Cause No. DC 09-17, and to the Honorable Gary Day, District Judge.

DATED this 17th day of September, 2009.


Chief Justice

W. William Layhart

Jim Rice

Paul J.
John Warner

Bill Miller

Justices